

## Calendar No. 202

106TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
{ 106-105

### CENTENNIAL OF FLIGHT CORRECTIONS ACT OF 1999

### REPORT

OF THE

### COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 1072

TO MAKE CERTAIN TECHNICAL AND OTHER CORRECTIONS RELAT-  
ING TO THE CENTENNIAL OF FLIGHT COMMEMORATION ACT (36  
U.S.C. 143 NOTE; 112 STAT. 3486, ET SEQ.)



JULY 8, 1999.—Ordered to be printed

Filed under authority of the order of the Senate of June 29, 1999

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CENTENNIAL OF FLIGHT CORRECTIONS ACT OF 1999

JULY 8, 1999.—Ordered to be printed

Filed under authority of the order of the Senate of June 29, 1999

Mr. THOMPSON, from the Committee on Governmental Affairs,  
submitted the following

REPORT

[To accompany S. 1072]

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I. PURPOSE AND SUMMARY

The purpose of S. 1072, the Centennial of Flight Corrections Act of 1999, is to make certain technical and other corrections relating to the Centennial of Flight Commemoration Act of 1998.

II. BACKGROUND

In the 105th Congress, Sen. Helms (R-NC) introduced S. 1397 for himself, Sen. DeWine (R-OH), and former Senators Glenn (D-OH) and Faircloth (R-NC). The purpose of S. 1397 was to establish a commission in commemoration of the centennial of powered flight and the achievements of the Wright brothers. The bill was inspired by the story of the Wright brothers—two bike shop owners from Dayton, Ohio who engaged in the first powered flight in Kitty Hawk, North Carolina almost a century ago.

The Commission consists of the Director of the National Air and Space Museum, the Administrator of the National Aeronautics and

Space Administration, the chairman of the First Flight Centennial Foundation of North Carolina, the chairman of the 2003 Committee of Ohio, the president or head of a U.S. aeronautical society, foundation, or organization of national stature not from North Carolina or Ohio (to be chosen by the Commission), and the Administrator of the Federal Aviation Administration.

#### ISSUES RAISED BY THE PRESIDENT

On November 13, 1998, S. 1397 was signed into law by President Clinton as P. L. 105-389. Although the President signed the bill into law, he simultaneously issued a statement which highlighted constitutional and conflicts of interest concerns with the structure of the Commission. Following Senate passage of S. 1397 by voice vote, the Office of Government Ethics (OGE) contacted Committee staff with general concerns relating to possible conflicts of interest affecting the private members of the Commission. The House subsequently passed S. 1397 unmodified by voice vote and it was signed into law by the President. It was not until President Clinton issued his statement that the Administration voiced concern about specific conflicts of interest and constitutional problems. Specifically, the President stated:

I am advised by the Department of Justice that section 9 of S. 1397, which authorizes the commission to devise a logo and regulate and license its use, is inconsistent with the Appointments Clause of the Constitution and that, accordingly, these functions may not be performed by the commission as it is currently organized. Similarly, although section 5(a)(3) directs the commission to "plan and develop" its own commemorative activities, the commission may not itself implement such activities because of Appointments Clause concerns. Finally, I also understand that the statute poses potential conflicts of interest problems. In contracting and in selecting an executive staff director and staff members (who will be considered Federal employees), the commission will need to take appropriate actions to avoid such conflicts. My Administration will work closely with the Congress to address these issues in future legislation.

The Department of Justice (DOJ) was of the opinion that the Commission would be engaging in executive branch functions and, thus, that the Commission members needed to be Presidentially appointed. The legislation named specific office-holders for the Commission. Although the Committee on Governmental Affairs had restricted the Commission from providing grants to private entities, OGE asserted that there were still possible conflicts of interest involving other Commission activities that may affect the respective private entities.

The Committee on Governmental Affairs, however, had modeled the Commission after previously established Commissions and had taken additional steps to guard against ethics problems that arose in previous Commissions. There had been numerous commissions established over the years for various reasons such as research and commemoration. According to the Congressional Research Service,

there were at least 8 Federal commemoration commissions in the last 15 years.

According to the General Accounting Office (GAO), the structure of these prior commissions created several problems including the mis-management of funds and excessive hiring of consultants. In order to guard against these problems the Committee on Governmental Affairs (1) attempted to ensure the Commission represented a balance between local and national interests, (2) set limits on the size and number of committees and task forces the Commission could set up, (3) ensured only the Commission, not its agents, could enter into legal agreement or procure services, (4) required the Commission to obtain equipment and office space through the General Services Administration (GSA) or the Smithsonian Institute unless equipment and office space could be obtained at a lower cost, (5) required all personnel, including the Executive Director, be hired in accordance with merit system principles, (6) prohibited the Commission from hiring experts or consultants, (6) restricted the Commission to appropriated funds, (7) prohibited the Commission from dispersing funds to private entities, (8) required the Commission to report annually to Congress, (9) directed the Inspector General of GSA to audit the Commission, and (10) required all historically significant material obtained by the Commission be given to the National Archives or other appropriate federal entity upon termination of the Commission.

Since the enactment of the Act, the Commission has been appropriated funds through the FY1999 Omnibus Appropriations Act, P.L. 105-277. The Commission has met but has not engaged in any activities for fear of legal and ethical repercussions in light of the President's statement. For these reasons, the Committee on Governmental Affairs began work in the 106th Congress with Senators Helms, DeWine, Voinovich (R-OH), Edwards (D-NC), Representative Tony Hall (R-OH), the Office of Government Ethics (OGE), and the Department of Justice (DOJ) to address the problems outlined in the statement by the President.

#### SOLUTIONS TO APPOINTMENTS CLAUSE AND CONFLICTS ISSUES

At the heart of the constitutional problem was the assertion that the Commission would be engaging in executive functions but that none of the Commission members were appointed by the President, in violation of Article II section 2 of the United States Constitution. In light of this, S. 1072 removes all executive functions from the Commission and transforms the Commission into an advisory commission governed by the Federal Advisory Committee Act (FACA). As a FACA commission, it will provide advice and recommendations to the President, Congress, and Federal agencies on issues relating to the celebration of the centennial of powered flight.

At the request of the Department of Justice (DOJ), the language allowing the Commission to represent the United States at international events was changed to language proposed by DOJ. DOJ concluded that it was inappropriate for this Commission to "represent" the United States. However, at the suggestion of DOJ, S. 1072 allows the Commission members to attend international activities to advise official United States representatives or to provide information about the activities of the Commission. The Commis-

sioners will also be able to advise the United States on ways to help facilitate international recognition of the importance of aviation history and the centennial of flight.

In addition to making the Commission advisory and making it clear it does not “represent” the United States, there were additional duties both OGE and DOJ felt should be modified because they were executive functions and presented conflicts problems. They related to entering into contractual agreements. S. 1072 addresses these concerns by allowing only the Administrator of the National Aeronautics and Space Administration (NASA) or the Administrator of the Federal Aviation Administration (FAA) to enter into procurement or other legal agreements on behalf of the Commission. Further, the NASA Administrator, in consultation with the Commission, will develop and license the official logo or emblem of the Commission.

These amendments also restrict these non-Executive Branch Commissioners from making any personnel decisions, including those related to the selection of the Executive Director. These decisions include hiring, termination, and conditions of employment. The Commission staff and the Executive Director would be considered Federal employees.

#### OTHER CHANGES

In addition to the changes taken in response to the Administration’s concerns, the Committee made other changes to the original Act. For example, S. 1072 clarifies the fact that those listed on the Commission and the Advisory Board can not designate another to sit in his or her place. Each Commissioner and the appropriate Advisory Board members may select alternates to vote on their behalf; however, the Commissioner or Advisory Board member is the official member and as such is responsible for how the alternative votes. This was done to ensure that Commissioners and Advisory Board members understood that they could not replace themselves.

An additional duties section was added at the request of Representative Tony Hall. The concern related to the fact that the General Services Administration (GSA), which oversees the operation of FACA commissions, would strictly construe the statute. This meant that the Commission would not be able to engage in the listed activities unless the statute explicitly allowed it. These non-executive and non-advisory functions were included to allow the Commission to more effectively advise and make recommendations to the appropriate entities. Each item listed is intended to help facilitate the Commission’s ability to collect the necessary information it needs to carry out its duties. Further, the requirement that the NASA Administrator or FAA Administrator procure and enter into legal agreements on behalf of the Commission will allow each of them to oversee these additional duties since many of the listed duties will require the Commission to procure services or sign contracts.

Licensing royalties received by the Commission must first be used by the Commission to carry out its duties under the Act. Any excess funds are to be transferred to NASA to commemorate the history of aviation or the centennial of powered flight.

Finally, the description of the type of persons appointed by the President to the Advisory Board was changed. Congress wanted to ensure that the persons appointed to the Advisory Board are adequately trained and experienced in the relevant fields. Amendments to the Advisory Board require that the President's appointees, among other things, have either an advanced degree related to aerospace history or science or active experience in those areas during the 5-years prior to appointment.

### III. LEGISLATIVE HISTORY

S. 1072 was introduced in the Senate by Senator DeWine on May 18, 1999 for himself and Senators Helms and Voinovich. The Senate Committee on Governmental Affairs considered S. 1072 on May 20, 1999. The Committee voted to order the bill reported by voice vote.

### IV. SECTION-BY-SECTION ANALYSIS

Section 1, Paragraph 1 strikes the term "or his designee" from the description of the membership of the Commission and adds language stating that the private-sector commissioners are to represent their respective entities on the commission. It further states that each commissioner may designate an alternate who may act in lieu of the respective member.

Paragraph 2 states that instead of the Commission engaging in the listed activities, the Commission will provide recommendations and advice to the President, Congress, and Federal agencies on effective ways to do the listed activities. Paragraph 2 also does not allow commissioners to represent the United States at international activities but rather allows them to attend and advise the United States on gaining international recognition on the importance of aviation history and powered flight. In addition, paragraph 2 adds additional duties such as assembling a calendar of events, soliciting information, disseminating the calendar, maintaining a web page on the Internet, writing press releases, conducting media interviews, contacting private entities with interests in aviation history, providing advice to private entities, encouraging organizations to publish related works, and sponsoring meetings.

Paragraph 3 makes some minor technical corrections to the Section 6 of the original Act related to Powers.

Paragraph 4 provides only the Administrator of NASA or the Administrator of FAA with the authority to procure and make legal agreements on behalf of the Commission.

Paragraph 5 allows the executive Director to be chosen from among the detailees from the agencies and organizations on the Commission as well as from the agencies listed in section 12(b)(1) (A) through (E) of the original Act. This includes Interior Department, Library of Congress, Air Force, Navy, and Department of Transportation. Paragraph 5 also restricts the private members of the commission from participating in any personnel decisions including hiring, termination, and setting terms and conditions of employment.

Paragraph 6 authorizes the Administrator of NASA, in consultation with the Commission, to devise a logo and to exercise sole and

exclusive right to use the logo. Paragraph 6 also allows the Commission to use funds generated by the licensing of the logo and to transfer any excess funds to NASA.

Paragraph 7 includes conforming amendments.

Paragraph 8 strikes “or the designee of the Secretary” and “or the designee of the Librarian” in the appropriate places. It also allows, as with the Commissioners, the appropriate Advisory Board members to select alternates. It also requires that the six citizens chosen by the President, among other things, have earned an advanced degree related to aerospace history or science, or have actively and primarily worked in an aerospace related field during the 5-year period before appointment by the President. It also requires that the Presidential appointees represent 1 or more of the persons or groups enumerated under section 5(a)(1) of the original Act.

#### V. ESTIMATED COST OF LEGISLATION

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 27, 1999.*

Hon. FRED THOMPSON,  
*Chairman, Committee on Governmental Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1072, a bill to make certain technical and other corrections relating to the Centennial of Flight Commemoration Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter.

Sincerely,

BARRY B. ANDERSON  
(For Dan L. Crippen, Director).

Enclosure.

*S. 1072—A bill to make certain technical and other corrections relating to the Centennial of Flight Commemoration Act*

S. 1072 would amend the Centennial of Flight Commemoration Act (Public Law 105–389) to make a number of technical corrections, as well as authorize the Centennial of Flight Commission, which Public Law 105–389 established, to conduct certain publicity and public awareness activities associated with the observance of the 100th anniversary of powered flight on December 17, 2003. CBO estimates that implementing S. 1072 would result in no significant costs to the federal government.

The bill would direct the commission to transfer funds that are excess to its needs to the National Aeronautics and Space Administration (NASA) and would require that NASA use the funds to commemorate the history of aviation or the centennial of powered flight. Public Law 105–277 appropriated \$250,000 to the commission for fiscal year 1999. Because S. 1072 could result in NASA spending, without further appropriation action, funds that might otherwise lapse at the end of this year, pay-as-you-go procedures



would apply. Any increase in net outlays from the transfer and use of excess 1999 funds would be negligible.

S. 1072 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on the budgets of state, local, or tribal governments.

The CBO staff contact is John R. Righter. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

## VI. REGULATORY IMPACT

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate “the regulatory impact which would be incurred in carrying out this bill.” The enactment of this legislation will not have significant regulatory impact.

## VII. CHANGES TO EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic and existing law in which no change is proposed is shown in roman):

### Public Law 105–389

#### CENTENNIAL OF FLIGHT COMMEMORATION ACT OF 1998

To establish a commission to assist in commemoration of the centennial of powered flight and the achievements of the Wright brothers.

\* \* \* \* \*

#### SEC. 4. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 6 members, as follows:

(1) The Director of the National Air and Space Museum of the Smithsonian Institution [or his designee].

(2) The Administrator of the National Aeronautics and Space Administration [or his designee].

(3) The chairman of the First Flight Centennial Foundation of North Carolina[,or his designee] *to represent the interests of the Foundation.*

(4) The chairman of the 2003 Committee of Ohio[, or his designee] *to represent the interests of the 2003 Committee.*

(5) As chosen by the Commission, the president or head of a United States aeronautical society, foundation, or organization of national stature or prominence who will be a person from a State other than Ohio or North Carolina *and shall represent the interests of such aeronautical entities.*

(6) the Administrator of the Federal Aviation Administration[, or his designee].

(b) ALTERNATES.—*Each member described under subsection (a) may designate an alternate who may act in lieu of the member to*

*the extent authorized by the member, including attending meetings and voting.*

[(b)] (c) \* \* \*  
 [(c)] (d) \* \* \*  
 [(d)] (e) \* \* \*  
 [(e)] (f) \* \* \*

#### SEC. 5 DUTIES.

(a) IN GENERAL.—The Commission shall *provide recommendations and advice to the President, Congress, and Federal agencies on the most effective ways to—*

[(1) represent the United States and take a leadership role with other nations in recognizing the importance of aviation history in general and the centennial of powered flight in particular, and promote participation by the United States in such activities;]

[(2)] (1) encourage and promote national and international participation and sponsorships in commemoration of the centennial of powered flight by persons and entities such as—  
 \* \* \*

\* \* \* \* \*  
 [(3)] (2) \* \* \*  
 [(4)] (3) \* \* \*  
 [(5)] (4) \* \* \*  
 [(6)] (5) \* \* \*  
 [(7)] (6) \* \* \*

(b) INTERNATIONAL ACTIVITIES.—*The Commission may—*

(1) *advise the United States with regard to gaining support for and facilitating international recognition of the importance of aviation history in general and the centennial of powered flight in particular; and*

(2) *attend international meetings regarding such activities as advisors to official United States representatives or to gain or provide information for or about the activities of the Commission.*

[(b)] (c) \* \* \*

(d) ADDITIONAL DUTIES.—*The Commission may—*

(1)(A) *assemble, write, and edit a calendar of events in the United States (and significant events in the world) dealing with the commemoration of the centennial of flight or the history of aviation;*

(B) *actively solicit event information; and*

(C) *disseminate the calendar by printing and distributing hard and electronic copies and making the calendar available on a web page on the Internet;*

(2) *maintain a web page on the Internet for the public that includes activities related to the centennial of flight celebration and the history of aviation;*

(3) *write and produce press releases about the centennial of flight celebration and the history of aviation;*

(4) *solicit and respond to media inquiries and conduct media interviews on the centennial of flight celebration and the history of aviation;*

(5) *initiate contact with individuals and organizations that have an interest in aviation to encourage such individuals and organizations to conduct their own activities in celebrations of the centennial of flight;*

(6) *provide advice and make recommendations to individuals and organizations that wish to conduct their own activities in celebration of the centennial of flight, and maintain files of information and lists of experts on related subjects that can be disseminated on request;*

(7) *sponsor meetings of Federal agencies, States and local governments, and private individuals and organizations for the purpose of coordinating their activities in celebration of the centennial of flight; and*

(8) *encourage organizations to publish works related to the history of aviation.*

#### **SEC. 6. POWERS.**

##### **(a) ADVISORY COMMITTEES AND TASK FORCES.—**

(1) **IN GENERAL.**—\* \* \*

(2) **FEDERAL COOPERATION.**—**[To ensure the overall success of the Commission's efforts, the Commission may call upon various Federal departments and agencies to assist in and give support to the programs of the Commission.]** The head of **[the Federal]** *a Federal* department or agency, where appropriate, shall furnish **[the information]** *information* or assistance requested by the Commission, unless prohibited by law.

(3) **PROHIBITION OF PAY OTHER THAN TRAVEL EXPENSES.**—Members of an advisory committee or task force authorized under paragraph (1) shall not receive pay, but may receive travel expenses pursuant to the policy adopted by the Commission under **[section 4(c)(2)]** *section 4(d)(2)*.

##### **(c) AUTHORITY TO PROCURE AND TO MAKE LEGAL AGREEMENTS.—**

(1) **IN GENERAL.**—Notwithstanding any other provision in this Act, only **[the Commission may]** *the Administrator of the National Aeronautics and Space Administration or the Administrator of the Federal Aviation Administration (or an employee of the respective administration as designated by either Administrator) may, on behalf of the Commission,* procure supplies, services, and property, and make or enter into leases and other legal agreements in order to carry out this Act.

\* \* \* \* \*

#### **SEC. 7. STAFF AND SUPPORT SERVICES.**

(a) **EXECUTIVE DIRECTOR.**—**[There]** *Subject to subsection (h), there shall be an Executive Director appointed by the Commission and chosen from among detailees from the agencies and organizations represented on the Commission or represented on the Advisory Board under section 12(b)(1) (A) through (E).* \* \* \*

(b) **STAFF.**—**[The Commission]** *Subject to subsection (h), the Commission may appoint and fix the pay of any additional personnel that it considers appropriate,* \* \* \*

\* \* \* \* \*

**[(g)] COOPERATIVE AGREEMENTS.**—The Commission may enter into cooperative agreements with other Federal agencies, State and

local governments, and private interests and organizations that will contribute to public awareness of and interest in the centennial of powered flight and toward furthering the goals and purposes of this Act.]

[(h)] (g) PROGRAM SUPPORT.—\* \* \*

(h) LIMITATION.—*Each member of the Commission described under section 4(a)(3), (4), and (5) may not make personnel decisions, including hiring, termination, and setting terms and conditions of employment.*

\* \* \* \* \*

#### SEC. 9. EXCLUSIVE RIGHT TO NAME, LOGOS, EMBLEMS, SEALS, AND MARKS.

(a) IN GENERAL.—[The Commission may] *After consultation with the Commission, the Administrator of the National Aeronautics and Space Administration may devise any logo, emblem, seal, or descriptive or designating mark that is required to carry out [its duties or that it] the duties under this Act or that the Administrator of the National Aeronautics and Space Administration determines is appropriate for use in connection with the commemoration of the centennial of powered flight.*

(b) LICENSING.—[The Commission shall have] *After consultation with the Commission, the Administrator of the National Aeronautics and Space Administration may exercise the sole and exclusive right to use, or to allow or refuse the use of, the name “Centennial of Flight Commission” on any logo, emblem, seal, or descriptive or designating mark [that the Commission lawfully adopts] adopted under subsection (a).*

\* \* \* \* \*

[(d)] USE OF FUNDS.—Funds from licensing royalties received pursuant to this section shall be used by the Commission to carry out the duties of the Commission specified by this Act.]

(d) USE OF FUNDS.—

(1) IN GENERAL.—*Subject to paragraph (2), funds from licensing royalties received under this section shall be used by the Commission to carry out the duties of the Commission specified by this Act.*

(2) EXCESS FUNDS.—*The Commission shall transfer any portion of funds in excess of funds necessary to carry out the duties described under paragraph (1), to the National Aeronautics and Space Administration to be used for the sole purpose of commemorating the history of aviation or the centennial of powered flight.*

\* \* \* \* \*

#### SEC. 10. REPORTS.

(a) ANNUAL REPORT.—In each fiscal year in which the Commission is in existence, the Commission shall prepare and submit to Congress a report describing the [activities of the Commission] *actions taken by the Commission in fulfillment of the Commission’s duties under this Act during the fiscal year.*

\* \* \* \* \*

(3) recommendations for any legislation or administrative action that the Commission determines to be appropriate regarding the commemoration of the centennial of powered flight; *and*

(4) an accounting of funds received and expended by the Commission in the fiscal year that the report concerns, including a detailed description of the source and amount of any funds donated to the Commission in the fiscal year; **[and]**

**[(5) an accounting of any cooperative agreements and contract agreements entered into by the Commission.]**

(b) **FINAL REPORT.**—Not later than June 30, 2004, the Commission shall submit to the President and Congress a final report. The final report shall contain—

(1) a summary of the **[activities]** *recommendations* of the Commission;

(2) \* \* \*

\* \* \* \* \*

## **SEC. 12. ADVISORY BOARD.**

(a) **ESTABLISHMENT.**—There is established a First Flight Centennial Federal Advisory Board.

(b) **NUMBER AND APPOINTMENT.**—

(1) **IN GENERAL.**—The Board shall be composed of 19 members as follows:

(A) The Secretary of the Interior**[, or the designee of the Secretary]**.

(B) The Librarian of the Congress**[, or the designee of the Librarian]**.

(C) The Secretary of the Air Force**[, or the designee of the Secretary]**.

(D) The Secretary of the Navy**[, or the designee of the Secretary]**.

(E) The Secretary of Transportation**[, or the designee of the Secretary]**.

(F) Six citizens of the United States, appointed by the President, who—

(i) are not officers or employees of any **[government]** *governmental entity*; and

**[(ii) shall be selected based on their experience in the fields of aerospace history, science, or education, or their ability to represent the entities enumerated under section 5 (a)(2).]**

(ii) *shall be selected among individuals who—*

*(I) have earned an advanced degree related to aerospace history or science, or have actively and primarily worked in an aerospace related field during the 5-year period before appointment by the President; and*

*(II) specifically represent 1 or more of the persons or groups enumerated under section 5(a)(1).*

\* \* \* \* \*

(2) **ALTERNATES.**—*Each member described under paragraph (1)(A) through (E) may designate an alternate who may act in*

*lieu of the member to the extent authorized by the member, including attending meetings and voting.*

\* \* \* \* \*

(h) PROHIBITION OF COMPENSATION OTHER THAN TRAVEL EXPENSES.—Members of the Advisory Board shall not receive pay, but may receive travel expenses pursuant to the policy adopted by the Commission under **section 4(e)** *section 4(d)*.

\* \* \* \* \*

**SEC. 13. DEFINITIONS.**

\* \* \* \* \*

**[(4) The term “designee” means a person from the respective entity of each entity represented on the Commission or Advisory Board.]**

**[(5)] (4) The term “First Flight” \* \* \***

